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December 30, 2011

VIA ECF & REGULAR MAIL

Hon. William J. Martini
United States District Judge
Martin Luther King, Jr.
Federal Building and U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: IdeaVillage Products Corp. v. Saevitzon et al.
Docket No.: PAS-C-117-11
Civil Action No.: 11-CV 7548

Dear Judge Martini:

This office is co-counsel to IdeaVillage Products Corporation ("IDV"). On December 28, 2011, co-defendant Paul von Mohr ("von Mohr") filed a facially defective Removal Petition in this Court. The Removal Petition (which contains demonstrably inaccurate information) was filed one (1) day before von Mohr's business partner, defendant Brett Saevitzon ("Saevitzon"), and von Mohr's and Saevitzon's business entity, defendant Spot On Direct Response LLC ("Spot On"), were required to file responses to an Order to Show Cause application filed by IDV. IDV's application -- filed on December 7, 2011 in the Superior Court of New Jersey -- seeks significant restraints against Saevitzon, von Mohr and Spot On; the return date had been scheduled for January 6, 2012.¹ Candidly, IDV believes that von Mohr and his partner filed the defective removal petition solely for the purpose of delaying the Order to Show Cause proceedings (to which they have, basically, no legitimate defense). For the following reasons, the Removal Petition is

¹ The hearing was originally scheduled for December 16, 2011, but was adjourned at the request of Defendants.

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facially defective and should be rejected, outright, by this Court. Accordingly, IDV respectfully requests that the Court *sua sponte* remand the matter to the Superior Court of New Jersey, so that the January 6, 2012 injunction hearing may proceed as scheduled.

By way of brief background, IDV's Order to Show Cause seeks an injunction and other equitable relief against Defendants, in part, for breach of contract. More specifically, IDV seeks to enforce its rights under an exclusive consulting agreement with Defendant Saevitzon, wherein Saevitzon granted IDV an exclusive license to a children's product known as "Stompeez" and exclusive licensing rights to that product and all of its intellectual property. Critically, the Complaint contains no federal claims and seeks only to enforce contractual rights between the parties.

von Mohr's defective Removal Petition contains two (2) purported bases for federal jurisdiction: (i) the case supposedly involves a federal question under the Lanham Act, and (ii) the Verified Complaint involves parties that are completely diverse. von Mohr's claims are patently frivolous and the removal petition is, therefore, defective. More specifically:

1. The operative Complaint does not plead a cause of action under the Lanham Act, 15 U.S.C. § 1051 *et seq.* (as suggested by von Mohr's Removal Petition). And, it is settled, as a matter of law, that state law breach of contract claims do not invoke the Lanham Act where, as here, a party is simply seeking to assert its rights under a contract (irrespective of whether or not the contract deals with intellectual property). Indeed, Silverstar Enterprises, Inc. v. Aday, 537 F.Supp. 236, 242 (S.D.N.Y. 1982) is directly on point on this issue, holding that a contract dispute between an exclusive licensee and a licensor over the right to use a trademark is determined by principles of state contract law (as it is the contract that defines the parties' relationship), and not the Lanham Act (which, in contrast, establishes marketplace rules governing the conduct of third parties). See also T.B. Harms Co. v. Eliscu, 339 F.2d 823, 826 (2d Cir.1964), *cert. denied*, 381 U.S. 915, 85 S.Ct. 1534, 14 L.Ed.2d

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435 (1965); Aamaco Transmissions, Inc. v. Smith, 756 F.Supp. 225, 227 (E.D.Pa. 1991); Staff Builders of Philadelphia, Inc. v. Koschitzki, 1989 WL 974707 at *2 (E.D.Pa. August 18, 1989); Shoney's Inc. v. Schoenbaum, 686 F.Supp. 554, 563-64 (E.D.Va. 1988); Tap Publications, Inc. v. Chinese Yellow Pages (New York) Inc., 925 F.Supp. 212, 217 (S.D.N.Y. 1996); Moog Controls, Inc. v. Moog, Inc., 923 F.Supp. 427, 430 (W.D.N.Y. 1996); Zerand-Bernal Group, Inc. v. Cox, 23 F.3d 159, 162 (7th Cir.1994); Gruen Marketing Corp. v. Benrus Watch Co., Inc., 955 F.Supp.979, 983 (N.D.Ill. 1997). In short, IDV's state law breach of contract action, indisputably, does not involve a federal question.

2. There is not complete diversity in this matter. As set forth in the operative Complaint, plaintiff IDV is a New Jersey company, and Defendant Interactive Group ("IG") - which was personally served with process on December 16, 2011² and which advertises Stompeez as one of its brands - is a New Jersey Limited Liability Company. See Exhibits "A" and "B". As such, complete diversity does not exist here.

3. The Removal petition is technically deficient, as not all Defendants (all of which have been served, either personally or in accordance with the Order to Show Cause, dated December 7, 2011) have joined in the petition, as is required. See, e.g., Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995).

For those simple reasons, we ask the Court to, *sua sponte*, remand the matter (or "reject the Notice of Removal"), to the Superior Court of New Jersey, Passaic County Chancery Division, immediately, in order to allow the January 6, 2012 Order to Show Cause hearing to proceed. That date is critically important as Defendants are, literally, causing IDV - the rightful licensee of the Stompeez brand - irreparable harm on a daily basis by ruining the value of the brand with their deceptive sales practices which are described, in plenty of detail, in consumer

² A true copy of the Proof of Service is annexed hereto as Exhibit "A."

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complaints, an example of which is annexed hereto as Exhibit "C."

If the Court so requires, we will file a motion to remand the matter forthwith, and ask that said motion be heard on an expedited basis.

Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "ML/Kaz".

Michael G. Langan

Enclosures

cc: Hon. Mark Falk
Andrew Bronsnick, Esq.
Kathleen Barnett Einhorn, Esq.
Donald A. Beshada, Esq.

EXHIBIT A

IDEAVILLAGE PRODUCTS, CORP.

Plaintiff

Superior Court Of New Jersey

BRETT SAEVITZON, ET ALS

vs.

PASSAIC Venue

Defendant

Docket Number: PAS C 117 11

Person to be served (Name and Address):

INTERACTIVE GROUP, LLC., D/B/A PREXIO TOYS, LTD.
ATTN: ALLAN J. SUTTON 701 COOPER ROAD, SUITE 11
VOORHEES NJ 08043

By serving: INTERACTIVE GROUP, LLC., D/B/A PREXIO TOYS, LTD.

Attorney: MICHAEL G. LANGAN, ESQ.

Papers Served: LETTER, ORDER TO SHOW CAUSE, LETTER TO THE
COURT, VERIFIED COMPLAINT, VERIFICATION & CERTIFICATION,
EXHIBITS A-L

Service Data: [X] Served Successfully [] Not Served

Date/Time: 12/16/2011 12:56PM

[] Delivered a copy to him/her personally

[] Left a copy with a competent household member over 14 years of age residing
therein (indicate name & relationship at right)[X] Left a copy with a person authorized to accept service, e.g. managing agent,
registered agent, etc. (indicate name & official title at right)

Cost of Service pursuant to R. 4:4-3(c)

\$ _____

Attempts:

Date/Time: _____

Date/Time: _____

Date/Time: _____

Name of Person Served and relationship/title:

JESSICA FALASCA

AUTHORIZED AGENT

FILED
STAMPED COPY WILL
ARRIVE SHORTLY

Description of Person Accepting Service:

SEX: F AGE: 21-35 HEIGHT: 5'4"-5'8" WEIGHT: 131-160 LBS. SKIN: WHITE HAIR: BLACK OTHER: _____

Unserved:

- [] Defendant is unknown at the address furnished by the attorney
 [] All reasonable inquiries suggest defendant moved to an undetermined address
 [] No such street in municipality
 [] Defendant is evading service
 [] No response on:

Date/Time: _____

Date/Time: _____

Date/Time: _____

Other:

Served Data:

Subscribed and Sworn to me this

19 day of Dec., 2011

Notary Signature: _____

Name of Notary

Commission Expiration

EDDIE ACOSTA, JR.

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires March 15, 2015

I, HANAN HAYON,

was at the time of service a competent adult, over
the age of 18 and not having a direct interest in the
litigation. I declare under penalty of perjury that the
foregoing is true and correct.

Signature of Process Server

12/19/2011

Date

Name of Private Server: HANAN HAYON Address: 2009 Morris Avenue UNION, NJ 07083 Phone: (800) PROCESS

MM

EXHIBIT B

New Jersey Business Gateway
Business Entity Information and Records Service
Business Id : 0400291183

Status Report For: INTERACTIVE GROUP LIMITED LIABILITY COMPANY
Report Date: 11/14/2011
Confirmation Number: 1318030939

IDENTIFICATION NUMBER, ENTITY TYPE AND STATUS INFORMATION

Business ID Number: 0400291183
Business Type: DOMESTIC LIMITED LIABILITY COMPANY
Status: ACTIVE
Original Filing Date: 06/09/2009
Stock Amount: N/A
Home Jurisdiction: NJ
Status Change Date: NOT APPLICABLE

REVOCATION/SUSPENSION INFORMATION

DOR Suspension Start Date: N/A
DOR Suspension End Date: N/A
Tax Suspension Start Date: N/A
Tax Suspension End Date: N/A

ANNUAL REPORT INFORMATION

Annual Report Month: JUNE
Last Annual Report Filed: 08/25/2010
Year: 2010

AGENT/SERVICE OF PROCESS (SOP) INFORMATION

Agent: ALAN J. SUTTON
Agent/SOP Address: 701 COOPER ROAD SUITE 11, VOORHEES, NJ, 08043
Address Status: DELIVERABLE
Main Business Address: 701 COOPER ROAD SUITE 11, VOORHEES, NJ, 08043
Principal Business Address: N/A

ASSOCIATED NAMES

Associated Name: N/A
Type: N/A

New Jersey Business Gateway
Business Entity Information and Records Service
Business Id : 0400291183

PRINCIPALS

Following are the most recently reported officers/directors (corporations), managers/members/managing members (LLCs), general partners (LPs), trustees/officers (non-profits).

Title:	OTHER
Name:	ALAN J. SUTTON,
Address:	701 COOPER ROAD ,VOORHEES,NJ 08043

FILING HISTORY -- CORPORATIONS, LIMITED LIABILITY COMPANIES, LIMITED PARTNERSHIPS AND LIMITED LIABILITY PARTNERSHIPS

To order copies of any of the filings below, return to the service page, <https://www.njportal.com/DOR/businessrecords/Default.aspx> and follow the instructions for obtaining copies. Please note that trade names are filed initially with the County Clerk(s) and are not available through this service. Contact the Division for instructions on how to order Trade Mark documents.

Charter Documents for Corporations, LLCs, LPs and LLPs

Original Filing	2009
(Certificate)Date:	

Changes and Amendments to the Original Certificate:

Filing Type	Year Filed
N/A	N/A

Note:

Copies of some of the charter documents above, particularly those filed before August 1988 and recently filed documents (filed less than 20 work days from the current date), may not be available for online download.

- For older filings, contact the Division for instructions on how to order.
- For recent filings, allow 20 work days from the estimated filing date, revisit the service center at <https://www.njportal.com/DOR/businessrecords/Default.aspx>

New Jersey Business Gateway
Business Entity Information and Records Service
Business Id : 0400291183

periodically, search for the business again and build a current list of its filings. Repeat this procedure until the document shows on the list of documents available for download.

The Division cannot provide information on filing requests that are in process. Only officially filed documents are available for download.

EXHIBIT C

WELL, MERRY CHRISTMAS TO YOU TOO STOMPEEZ!!! My granddaughter cried all day Christmas because she did not get the Stompee she ask Santa for. She said this meant she was not a good girl. NOOOO, it means Stompee did not send the shoes her grandmother ordered, by Christmas, as promised! Stop advertising, because you are out of the product and do not send on time when you have them in stock. Shame, Shame Stompee!

Reply

2. *Angela* says:

December 30, 2011 at 12:07 am

I guess I'll join the chorus of disappointed customers. My daughter saw the nonstop commercials for these slippers on Nickelodeon and begged for them. I went against my better judgment (\$20 for slippers!!) and ordered a pair Thanksgiving weekend. I had read the reviews about slow shipping, but at the time the website promised delivery by Christmas, so I placed my order. By Tuesday, December 20th, I was getting concerned because the slippers were not here and the website just said "processing". I called and got the same line everyone else has gotten. "We just received a shipment of these and they are being mailed tonight. We still GUARANTEE delivery by Christmas." Clearly Christmas has come and gone and no Stompee. We called on the 27th and got the same exact line I got on the 20th, but still no Stompee and the website still just says order processing. My problem is not with the slow shipping. My problem is with the outright deception. Don't promise something you can't deliver and quit lying and telling me the dadgum slippers have shipped when they haven't!!! And how am I supposed to cancel the order and disappoint my 5 year old who is carrying around the picture of the Stompee and checking the mail every day anxiously waiting for her slippers. They should be ashamed of themselves for marketing to kids and then disappointing them on Christmas. We filed a complaint with the BBB and the Attorney General's office. The company did take the shipping charge off of our order, but really we just want the stinking slippers, or at least a straight answer about when they will get here.

Reply

3. *Jeri Buettner* says:

December 29, 2011 at 6:28 pm

Ordered 15 Stompee pairs for my elderly mother on 11/06 for her grand and great grandchildren. Guess whatstill waiting. Called 4 times and got a different excuse every time. Guaranteed to receive before Christmas. My mother got home day before Christmas from nursing home to find still no presents for her small grandchildren!!

Reply

4. *Carrie* says:

December 29, 2011 at 5:55 pm

I have had the same experience. Still don't have my order that was guaranteed by Christmas! Now they are saying 4-5 weeks backordered. I am considering canceling my order but not sure I'll ever see my money. I've never had such an unprofessional experience.

Reply

5. *Ruby* says:

December 29, 2011 at 2:14 pm